No. [illegible]

In the Supreme Court of the United States

October Term, 1967

SAM ROSENWEIG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

[illegible]

[illegible]

[illegible]

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No. 745

SAM ROSENZWEIG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was charged in a two-count indictment with failing to pay the tax imposed by 26 U.S.C. 4411 and with wilfully failing to register as required by 26 U.S.C. 4412 (A. 4–5). He was convicted in a non-jury trial (A. 146–148). On March 28, 1966, he was sentenced to pay a fine of $2,000 on the first count and to imprisonment for one year on the second count. The sentence of imprisonment was suspended and he was placed on probation for eighteen months (A. 2–3).

The evidence showed that five persons placed bets by calling the telephone numbers furnished by peti-

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tioner (A. 11, 42, 67–68, 77, 93). The bettors would give their names, place their bets and say "for Sam" (A. 12, 46, 60, 78). At intervals they also met petitioner and settled their wagering accounts with him (A. 16, 47–48, 70, 81, 89–90).

In his own defense, petitioner admitted that he had settled the wagering accounts but claimed that he acted gratuitously for a bookmaker named Slim Shackman (A. 114–126). A reluctant government witness had testified that on occasion a man named "Slim" had also given her a telephone number for wagering purposes (A. 91).

The only issue raised by petitioner—that he was not engaged in the business of accepting wagers—has no substance.[1] His relationship with the five bettors, which included paying and collecting the money won and lost on wagering, furnished ample circumstantial evidence that he was engaged in the wagering business. *United States* v. *Calamaro*, 354 U.S. 351, upon which petitioner relies, is not in point. In that case, it was undisputed that the defendant merely picked up lottery slips after the wagers had been placed and had no property interest in the numbers enterprise. There is accordingly no reason here to disturb the findings of the two courts below.

[1] Unlike petitioners in *Costello* v. *United States*, No. 41, this Term, and the other related cases presently before this Court, petitioner in this case does not assert any Fifth Amendment questions as to the constitutionality of the wagering tax laws under which he was convicted; nor did he preserve his right to do so by raising such questions in the courts below.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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